

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ROBERT GONZALES, individually,
and by and through his next friends and
guardians, David and Christina Romero,

Plaintiff,

v.

CV 09-0021 JCH/GBW

MIKE MARQUEZ, BRIAN SANCHEZ, RENEE
DOLAN, in their individual and official capacities
as police officers, and the CITY OF ALBUQUERQUE,
FLOYD GONZALES, and JOHN DOES 1-3,
in their official and individual capacities as
Metropolitan Detention Center employees, and
BERNALILLO COUNTY,

Defendants.

ORDER GRANTING PLAINTIFF'S SECOND MOTION TO COMPEL

THIS MATTER is before the Court on Plaintiff's Second Motion to Compel
Discovery Responses from APD Defendants Following the Prior Court Order (Doc. 41)
After the First Motion and Plaintiff's Amendment to and Supplement of that Motion. *Docs.*
50, 51.

On June 25, 2009, Plaintiff filed a Motion to Compel Responses to Interrogatories
and Requests for Production. *Doc. 28.* Plaintiff sought to compel discovery from
Defendants Sanchez, Marquez and Dolan. *Id.* As of August 31, 2009, no response had been

filed by Defendants, which constituted consent to grant the motion. *See* D.N.M.LR-Civ. 7.1(b). Consequently, the Motion to Compel was granted. *Doc. 41*. Defendants Sanchez, Marquez and Dolan were ordered to provide the discovery responses no later than September 11, 2009. *Id.* At that time, no costs or fees were imposed on Defendants. *Id.* at 2. However, Defendants were advised that “failure to comply with [the] Order may lead to the imposition of costs and fees for this Motion as well as additional sanctions.” *Id.*

On September 22 and 23, 2009, Plaintiff filed a Second Motion to Compel and Amendments/Supplements to that Motion. *Docs. 50, 51*. Plaintiff contends that Defendants Sanchez, Marquez and Dolan have still failed to respond fully to Interrogatories 5, 6, 8, 9, and 12, and Requests for Production 6 and 9. *Doc. 51* at 5. Again, Defendants have, as of the date of this Order, failed to respond. The failure to file a response constitutes consent to grant the motion. *See* D.N.M.LR-Civ. 7.1(b). Therefore, the Second Motion to Compel as amended and supplemented¹ shall be granted. Defendants Marquez, Sanchez, and Dolan are ordered to fully respond to Interrogatories 5, 6, 8, 9, and 12, and Requests for Production 6 and 9 no later than November 18, 2009.

Counsel for Plaintiff will be awarded attorney’s fees and costs incurred in making the original Motion to Compel Responses to Interrogatories and Requests for Production

¹ As described in Amendment to and Supplement of Plaintiff’s Second Motion to Compel Discovery Responses from APD Defendants Following the Prior Court Order After the First Motion. *Doc. 51*.

and Amendment to and Supplement of Plaintiff's Second Motion to Compel Discovery Responses from APD Defendants Following the Prior Court Order After the First Motion. *See Docs. 28, 51.*² Counsel for Plaintiff is ordered to file an affidavit outlining his costs and fees within seven (7) days of the entry of this Order. Counsel for Defendants may respond five (5) days after service of Plaintiff's counsel's affidavit.

IT IS SO ORDERED. _____

GREGORY B. WORMUTH
UNITED STATES MAGISTRATE JUDGE

² The Court has intentionally excluded fees and costs incurred in making Plaintiff's Second Motion to Compel Discovery Responses from APD Defendants Following the Prior Court Order After the First Motion filed September 22, 2009, given the factual errors contained therein. *See Doc. 51* (conceding errors in previous filing).

A true copy of this order was served
on the date of entry--via mail or electronic
means--to counsel of record and any *pro se*
party as they are shown on the Court's docket.